

Remarks

This Application has been carefully reviewed in light of the Office Action mailed October 5, 2004 containing a restriction requirement. Applicant provisionally elects with traverse to prosecute Claims 1-10, 27-36, and 41 (Examiner's Group I). Applicant notes that the Examiner did not specify a group for Claim 43. Given that Claim 43 is directed to software and that Claims 21-36, which the Examiner included in Group I, are also directed to software, Applicant believes that the Examiner intended to include Claim 43 in Group I. If this is incorrect, Applicant would appreciate clarification of the Examiner's position with respect to Claim 43. Applicant has withdrawn Claims 14-23 and 42 without prejudice or disclaimer; however, Applicant respectfully requests that if the Examiner withdraws the restriction with respect to any non-elected claims, the Examiner reinstate those claims. Applicant respectfully requests reconsideration of the restriction requirement in view of the following remarks.

I. The Restriction Requirement

The Examiner requires restriction to one of the following groups (*see* Office Action, Page 2):

- I. Claims 1-10, 27-36, and 41 "drawn to a computer-instructions embedded in a computer-readable medium, (a system containing merely above software product) for matching a seller to a buyer, classified in class 705, subclass 29 (wherein a selecting criteria is available items of different suppliers);" and
- II. Claims 14-23 and 42 "drawn to a method for online matching a seller to a buyer based on a nearest location of supplier compared to a buyer (e.g., a pizza delivery service), classified in class 705, subclass 26."

Applicant respectfully traverses the restriction requirement. There are two criteria for a proper requirement for restriction between patentably distinct inventions: (1) the inventions must be independent or distinct as claimed; and (2) there must be a serious burden on the Examiner if restriction is not required. M.P.E.P. § 803. Applicant respectfully submits that these two criteria have not been satisfied.

II. Groups I and II Should be Examined in a Single Application

First, Applicant respectfully submits that the inventions in Groups I and II are neither independent nor distinct. The term "independent" means that there is no disclosed relationship between the two or more subjects disclosed, that is, they are unconnected in design, operation, or effect. M.P.E.P. § 802.01. The claims of Groups I and II clearly recite substantially similar limitations. Also, the Specification discloses relationships among the subjects of Groups I and II. (*See, e.g.*, Page 18, Line 11 through Page 19, Line 29; Page 20, Line 24 through Page 22, Line 8). Thus, the inventions are not independent. The term "distinct" means that two or more subjects as disclosed are related, but are capable of separate manufacture, use, or sale as claimed, and are patentable, that is, novel and unobvious, over each other. M.P.E.P. § 802.01. The claims of Groups I and II clearly recite substantially similar limitations. Applicant respectfully submits that the Examiner would not consider the claims of either of Groups I and II to be novel and unobvious over the other. By example, if a prior art reference disclosed the subject matter of Claim 1 of Group I in its entirety, Applicant respectfully submits that the Examiner would not consider Claim 14 of Group II novel and unobvious over that reference. Thus, the inventions are not distinct.

Second, Applicant respectfully submits that the search and examination of the Application may be made without serious burden on the Examiner since the claims of Groups I and II clearly recite substantially similar limitations. "If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions." M.P.E.P. § 803.

Accordingly, Applicant respectfully requests reconsideration and withdrawal of the restriction requirement and examination of all pending claims together in this Application. Applicant reserves the right to petition the restriction requirement if the restriction requirement is made final.

III. No Waiver

All of Applicant's arguments and amendments are without prejudice or disclaimer. By not responding to additional statements made by the Examiner, Applicant does not acquiesce to the Examiner's additional statements.

Conclusion

Applicant believes this case is in condition for allowance. For at least the foregoing reasons, Applicant respectfully requests early and favorable action in this case, including the full allowance of all pending claims.

If the Examiner believes a telephone conference would advance prosecution of this case in any way, the Examiner is invited to contact Christopher W. Kennerly, the Attorney for Applicant, at the Examiner's convenience at (214) 953-6812.

Applicant believes that no fees are due. However, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.
Attorneys for Applicant



Christopher W. Kennerly
Reg. No. 40,675

Date: 11/1/04, 2004

Customer Number

05073